



**University of California
Ernest Orlando Lawrence
Berkeley National Laboratory**

GENERAL PROVISIONS FOR EQUIPMENT LEASE

DEFINITIONS

As used herein, the following terms shall have the indicated meanings:

- "Items" means the equipment leased under the Subcontract, an any related supplies and services.
- "Lease" means a straight lease or rental agreement as indicated on the University's subcontract.
- "Lessor" means the grantor (i.e. subcontractor) of the use of personal property by lease.
- "Lessee" means the grantee (i.e. University) of the use of personal property by lease.
- "Government" means the United States Government.
- "DOE" means the U. S. Department of Energy.
- "University" means The Regents of the University of California, acting through the LBNL.
- "LBNL" means the Ernest Orlando Lawrence Berkeley National Laboratory.

SCOPE

The terms of any proposal referred to in this Lease are included and made a part of the Lease only to the extent it specifies the equipment and supplies ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of this Lease. The Lease is entered into as a subcontract under the University's Prime Contract No. DE-AC02-05CH11231 with the Government, represented by the DOE, for management and operation of the LBNL and the performance of certain research and development work.

ACCEPTANCE

The equipment, supplies and services covered by this Lease shall be furnished by the Lessor subject to all the terms and conditions set forth in this Lease including the following, which the Lessor, in accepting this Lease agrees to be bound by and to comply with in all particulars and no other terms or conditions shall be binding upon the parties unless hereafter accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies or the performance of all or any portion of the services covered by this Lease shall constitute unqualified acceptance of all its terms and conditions.

INSPECTION

The equipment, supplies and services furnished shall be exactly as specified in this Lease, free from all defects in manufacturer's design, workmanship and materials, and, except as otherwise provided in this Lease, shall be subject to inspection and testing by the University at all times and places. If, prior to final acceptance, any equipment, supplies or services are found to be defective or not as specified, the University may reject them, require the Lessor to correct them without charge, or require delivery of such equipment, supplies, or services at a reduction in price which is equitable under the circumstances. If the Lessor is unable or refuses to correct such items within a time deemed reasonable to the University, the University may terminate the Lease in whole or in part. The Lessor shall bear all risks as to rejected equipment, supplies and services and, in addition to any costs for which the Lessor may become liable to the University under other provisions of this Lease, shall reimburse the University for all transportation costs, other related costs incurred, or payments to the Lessor in accordance with the terms of this Lease for unaccepted equipment, supplies and services. Notwithstanding final acceptance and payment the Lessor shall be liable for latent defects, fraud or such gross mistakes as amount to fraud.

DOCUMENTS OF SUBCONTRACTOR

The provisions of any quotation or other documents of the Subcontractor referenced in or incorporated as a part of this Subcontract are referenced or incorporated only for the purpose of specifying the nature of the materials, supplies, or services ordered, the price therefor, and/or the delivery thereof, and any terms and conditions contained in such referenced or incorporated documents shall not apply.

TERMS OF USE

Except as otherwise provided in this Lease, the specified rental payments shall entitle the University to unlimited use and operation of said equipment at any time and any place and for any period of time at the convenience of the University (exclusive of the time required for preventive and remedial maintenance) and shall not be restricted to consecutive hours, length of personnel shifts, or any other restrictions.

CHANGES

No change to the Lease shall be allowed without written approval of the University. Any claim of the Lessor for an adjustment under this Article must be made in writing within thirty (30) days from the date of receipt notification of such change unless the University waives this condition in writing. Nothing in the Article shall excuse the Lessor from proceeding with performance of the Lease as changed hereunder.

TERMINATION

The University may at its option, by written notice stating the extent and effective date, terminate this order at the anniversary date of the Lease or at the end of any fiscal year (September 30) in whole or in part in the event the funding agency does not appropriate sufficient funds to continue the lease payments.

The University may by written notice terminate this Lease for the Lessor's default, in whole or in part, at any time, if the Lessor refuses or fails to comply with the provisions of this Lease, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to make deliveries of said equipment or supplies or perform the services within the time specified or any written extension thereof.

In the event the University defaults in the payment of any amount due or to become due under the terms of the Lease or defaults in the performance of any of the terms and conditions hereof, all the University's rights hereunder as to use and possession of the equipment shall, at the option of the Lessor, terminate and the Lessor shall become entitled to retake possession of the property, provided however, that in such event neither the Lessor nor the University shall have the right to rent said equipment to any third party so long as it remains on the premises of the University.

TITLE

The Lessor covenants that it is the sole owner of said property, and that no other person, party, firm or corporation has any right, title, interest in or to same and that during the term of this Lease said the Lessor will not sell or encumber said property, or any interest therein, except subject to the rights given the University by virtue of the Lease. Title to said property, including any accessories and devices furnished by the Lessor except those subsequently purchased by the University,

vests in the Lessor, and said property may be removed by the Lessor at or after termination of this Lease unless purchased by the University pursuant to its Purchase Option, if any.

RISK OF LOSS

During the period of time that property covered by this Lease is in the possession of the University, the University (and its customers, if installed on the University's customers' premises) shall take good care of the property and the University shall be responsible for any loss of or damage to the property caused by the University while in its possession and control, unless such damage or loss is a consequence, directly or indirectly of intentional or negligent acts or omissions of the Lessor or the Lessor's agents.

PAYMENT

Unless otherwise provided for in this Lease, lease charges shall be invoiced in arrears and shall be payable thirty (30) days after the end of the period for which the charges accrue or thirty (30) days after the University's receipt of invoice whichever is later.

TAXES

The Lessor alone shall pay any license fees, assessments, sales, use and other taxes lawfully imposed during the term hereof upon the equipment, supplies or services furnished pursuant to this Lease.

PROPERTY TAX EXEMPTION

The Lessor agrees to cooperate with the University and do all acts reasonably necessary and appropriate to secure and maintain tax exemption of the property leased hereunder pursuant to Article 13, section 3 of the California Constitution. The Lessor agrees to apply the amount of any reduction of tax resulting from such exemption as a credit against rental payments otherwise due by the University to the Lessor hereunder.

WARRANTY

The Lessor warrants that said equipment, including accessories, will be in good operating condition when installed and that any subsequent defects in design, materials or workmanship during the term of this Lease will be corrected by the Lessor at its sole expense. In the event of defect in design, material, or workmanship during the term of the Lease, the Lessor will assert any Manufacturer's Warranty in effect between the Lessor and the Manufacturer at the time the defect becomes apparent. The Lessor shall also assign to the University, in accordance with the terms of service and maintenance under this agreement, any and all of the manufacturer's warranties expressed or implied, issued on or applicable to each unit of equipment covered hereunder in the event service and maintenance is not covered under this Lease. In such an event, the Lessor shall authorize the University to obtain all warranties and services furnished in connection therewith by the manufacturer. The Lessor will inform the University of the terms and conditions of the manufacturer's warranty in effect on the commencement date of this Lease, and shall execute, if applicable, such documents of assignment as the University may reasonably request and will otherwise use its best efforts to make available to the University all of its rights under the manufacturer's warranties on the equipment.

PROPRIETARY RIGHTS INDEMNITY

Lessor shall indemnify, defend, and hold harmless University, its officers, agents, and employees against all losses, damages, liabilities, costs, and expenses (including but not limited to attorney's fees) resulting from any judgment or proceeding in which it is determined, or any settlement agreement arising out of the allegation, that Lessor's furnishing or supplying University with parts, goods, components, programs, practices, or methods under this order constitutes an infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party. The foregoing shall not apply unless University has informed Lessor as

soon as practicable of the suit or action alleging such infringement. Lessor shall not settle such suit or action without the consent of University. University retains the right to participate in the defense against any such suit or action.

TRANSPORTATION AND INSTALLATION

Unless otherwise provided for in this Lease, the Lessor will be responsible for all transportation and handling costs related to the shipment to and from the University of the leased equipment. Should the equipment require specialized installation, the Lessor will provide the required technical assistance at no charge.

SERVICE AND MAINTENANCE

In the event this Lease includes service and maintenance of said equipment, the Lessor will provide such service and maintenance required to keep said equipment in good working condition throughout the term of Lease. The service and maintenance will consist of not less than: (1) periodic cleaning, and adjustments in the mechanisms and replacing unserviceable parts, and (2) emergency repair service, including replacement of unserviceable parts. In order to perform maintenance service hereunder the Lessor shall have reasonable access to the leased equipment to the extent practical in consonance with operational requirements. The Lessor agrees that its failure to provide service and maintenance to keep the equipment in good operating condition shall result on a credit of 1/30th of the monthly lease payments for every twenty-four (24) hour period or portion thereof following the first twenty-four (24) hours after notification to the Lessor that the equipment is inoperative.

If this Lease does not include service or maintenance, the University will be responsible for general maintenance and repair and protect said equipment from deterioration, other than normal wear and tear, and will not use the equipment for any purpose other than that for which it was designed during the term of the Lease.

ALTERATIONS

The University or its authorized agents may make alterations or install attachments to the equipment and the Lessor shall be so notified. In the event that such changes substantially increase the cost of maintenance, mutually agreeable arrangements for additional maintenance service shall be made on an individual installation basis. Such alterations or attachments which are not the property of the Lessor shall be removed immediately after discontinuation of Lease (unless the University elects to exercise its Purchase Option) and the equipment restored to the prior configuration (ordinary wear and tear only excluded) at the University's expense. The Lessor shall inform the University of any provisions in the manufacturer's warranty which may cause the warranty to be affected by any such alterations or attachments.

LESSOR'S LIABILITY AND INSURANCE REQUIREMENTS

(Applicable to work involving Subcontractor's performance at University or Government-owned sites or facilities.)

A. Indemnification. The Lessor shall defend, indemnify, and hold harmless the University, its officers employees, and agents, from and against all losses, expenses (including attorney's fees), damages, and liabilities of any kind resulting from or arising out of this Lease and/or the Lessor's performance hereunder, provided such losses, expenses, damages, and liabilities are due or claimed to be due to the negligent or willful acts or omissions of the Lessor, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under the Lessor's direction and control.

B. Insurance. In consideration of the above, the Lessor shall at its expense obtain, keep in force and maintain insurance to cover its performance under this Lease as follows:

1. Comprehensive or Commercial Form General Liability Insurance (Contractual Liability Included)

Minimum Limits:

Each Occurrence: \$1,000,000

Products/Completed Operations: \$1,000,000

If the above insurance is written on a claims made form, it shall continue for three years following termination of this Lease. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Lease

2. Business Auto Liability: (Owned, Scheduled, Non-Owned, or Hired Automobiles) with a combined single limit of no less than:

\$1,000,000 per occurrence.

3. Workers' Compensation as required under California State law.

The Lessor, upon the acceptance or execution of this Lease, shall furnish the University with Certificates of Insurance evidencing compliance with all requirements. Coverages referred to under B 1. and 2. above shall include The Regents of the University of California as an additional insured, but only with respect to the negligent acts or omissions of the Lessor, its officers, agents, employees, subcontractors or anyone directly or indirectly employed by them, or any other person or persons under its direction and control. The Certificates of Insurance shall obligate the Lessor's insurers to notify the University at least 30 days prior to cancellation of or change in any of said insurance.

LAWS AND REGULATIONS

The Items shall be designed, produced, sold, and delivered in accordance with, and Subcontractor and its employees and sub-vendors shall at all times comply with, all applicable state and federal laws, ordinances, statutes, codes, rules, and regulations, including, but not limited to, those relating to wages, hours, employment discrimination, immigration, and safety (including OSHA).

ASSIGNMENT

This subcontract may be assigned by the University to the U.S. Government or a successor-in-interest. This Lease is not assignable by the Lessor, except as to any payment due hereunder, without the written approval of the University.

DISPUTES

Except as otherwise provided in the Subcontract, any claim under the Subcontract not resolved in the ordinary course of business shall be referred in writing to the LBNL procurement representative and the executive management representative of the Subcontractor with the authority to settle the dispute. The representatives of the parties, or their designees, shall then attempt in good faith to resolve the dispute by negotiations. All negotiations shall be confidential and shall be treated as compromise and settlement negotiations, for the purposes of application of rules of evidence. Pending resolution of the dispute, the Subcontractor shall proceed diligently with the performance of the Subcontract, in accordance with its terms and conditions.

Any unresolved dispute with a value under \$100,000 relating to the Subcontract (whether contract, tort, or both), or the breach of the Subcontract shall be arbitrated by and in accordance with the then existing commercial arbitration rules of the American Arbitration Association (AAA). Judgment on the award rendered by the arbitrator may be entered in any court in Alameda County, CA having jurisdiction.

The following modifications are made to the AAA rules: (1) the arbitrator shall be neutral and appointed by the AAA.; (2) the location

for all arbitrations shall be in Alameda County; and (3) each party to the arbitration shall pay its pro rata share of the arbitrator's fees not including counsel fees or witness fees or other expenses incurred by a party for its own benefit.

The parties shall consider the use of a form of alternate disputes resolution (ADR), including non-binding mediation and binding arbitration, for any unresolved dispute with a value of \$100,000 or more. In the event that ADR fails or is not used for such disputes, the parties may thereafter pursue any remedy they may have, at law or in equity, in a court of competent jurisdiction, in accordance with the provision of these General Provisions entitled *GOVERNING LAW AND VENUE*.

GOVERNING LAW AND VENUE

The Subcontract shall be interpreted in accordance with the substantive and procedural laws of the State of California. Any action at law or judicial proceeding instituted by either party pertaining to the Subcontract shall be instituted in the State of California in the Superior Court of Alameda County.

ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

This Subcontract shall consist of the Subcontract Signature Page, any Special Provisions, these General Provisions, and any other referenced and incorporated clauses, provisions and documents, which is the entire agreement between the parties concerning the subject matter hereof and supersedes all prior proposals, representations, negotiations, or agreements, whether written or oral.

Any inconsistencies in the terms and conditions comprising the Subcontract shall be resolved by giving precedence in the following order: (a) the Subcontract document; (b) any Special Provisions; (c) these General Provisions; (d) the clauses listed in the provision of these General Provisions entitled *CLAUSES INCORPORATED BY REFERENCE*; (e) any specifications; (f) other documents listed in the special provision entitled *INCORPORATED DOCUMENTS*, if any, in the order in which they are listed; and (g) any other documents, exhibits, or attachments.

CLAUSES INCORPORATED BY REFERENCE

The FAR and DEAR clauses listed below, which are located in Chapters 1 and 9, respectively, of Title 48 of the Code of Federal Regulations, are incorporated by this reference as a part of the University's Subcontract with the same force and effect as if they were included therein in full text, unless otherwise specified in the University's purchase order or subcontract. As used in the clauses, the term "contract" shall mean the Subcontract; the term "Contractor" shall mean the entity (hereinafter "Subcontractor") who entered into the Subcontract with the University; the term "subcontractor" shall mean the Subcontractor's subcontractor; and the terms "Government" and "Contracting Officer" shall mean the University, except in clauses FAR 52.215-2, 52.227-1, 52.227-1 Alternate I, 52.227-2, 52.227-3, 52.227-14, and 52.227-19, and DEAR 952.227-11 and 952.227-13, in which clauses "Government" shall mean the U. S. Government and "Contracting Officer" shall mean the DOE Contracting Officer for Prime Contract DE-AC02-05CH11231 with the University.

THE FOLLOWING CLAUSES APPLY TO ANY LEASE:

FAR 52.211-17	DELIVERY OF EXCESS QUANTITIES (SEP 1989), if the Subcontract is for supplies.
FAR 52.222-26	EQUAL OPPORTUNITY (APR 2002) (Note: Download the EEO Poster at: http://www.dol.gov/esa/ ; select "Posters" then "Equal Employment Opportunity Act")
FAR 52.225-1	BUY AMERICAN ACT - SUPPLIES (MAY 2002).
FAR 52.227-1	AUTHORIZATION AND CONSENT (JUL 1995)

FAR 52.227-14 RIGHTS IN DATA-GENERAL (JUN 1987) including Alternate V and DEAR 927.409 (a) (1). If delivery of limited right data is required, add Alternate II. If delivery of restricted computer software is required, add Alternate III.

FAR 52.227-19 COMMERCIAL COMPUTER SOFTWARE-RESTRICTED RIGHTS (JUN 1987), if the Subcontract involves the acquisition of commercially available computer software and a GSA/Seller Multiple Award Federal Supply Schedule Contract is not applicable.

FAR 52.227-23 RIGHTS TO PROPOSAL DATA (TECHNICAL) (JUN 1987), if the Subcontract is based upon a technical proposal.

FAR 52.232-11 EXTRAS (APR 1984)

FAR 52.242-15 STOP-WORK ORDER (AUG 1989)

FAR 52.243-1 CHANGES – FIXED PRICE (AUG 1987) Use Alternate I for services when no supplies are to be furnished. Use Alternate II for services when supplies are to be furnished.

FAR 52.244-6 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (MAY 2002)

FAR 52.245-2 GOVERNMENT PROPERTY (FIXED PRICE CONTRACTS) (DEC 1989), as modified by DEAR 952.245-2.

FAR 52.249-1 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SHORT FORM) (APR 1984), if for supplies.

FAR 52.249-4 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (SERVICES) (SHORT FORM) (APR 1984), if for services.

DEAR 952.227-9 REFUND OF ROYALTIES (FEB 1995), if "royalties" are paid under the Subcontract by the Subcontractor or a subcontractor at any tier.

DEAR 970.5204-59 WHISTLEBLOWER PROTECTION FOR CONTRACTOR EMPLOYEES (APR 1999), if the work is performed on-site at a DOE-owned or leased facility.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$10,000 OR MORE:

FAR 52.222-35 AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (12/01)

FAR 52.222-36 AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES (6/98)

FAR 52.222-37 EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA (12/01)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT IS FOR \$25,000 OR MORE:

DEAR 970.5223-4 WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000), if the PO involves any of the hazardous activities stipulated in 10 CFR 707.2.

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$100,000:

FAR 52.203-6 RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT (JUL 1995) Use Alternate I if the Subcontract is for "commercial items".

FAR 52.203-7 ANTI-KICKBACK PROCEDURES (JUL 1995), unless the Subcontract is for "commercial items", excluding paragraph (c)(1)

FAR 52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (JAN 1997)

FAR 52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (JUN 1997)

FAR 52.219-8 UTILIZATION OF SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS CONCERNS (OCT 2000)

FAR 52.222-4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT – OVERTIME COMPENSATION (SEP 2000), if the Subcontract involves mechanics or laborers and is for supplies other than "commercial items."

FAR 52.227-2 NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT (AUG 1996)

FAR 52.227-3 PATENT INDEMNITY (APR 1984), if commercial supplies are furnished under the Subcontract.

FAR 52.229-3 FEDERAL, STATE, AND LOCAL TAXES (JAN 1991)

FAR 52.247-63 PREFERENCE FOR U.S.-FLAG AIR CARRIERS (JAN 1997), if the Subcontract involves international air transportation.

FAR 52.247-64 PREFERENCE FOR PRIVATELY OWNED U.S.-FLAG COMMERCIAL VESSELS (6/2000), if the Subcontract involves ocean transportation of supplies other than "commercial items."

FAR 52.249-2 TERMINATION FOR CONVENIENCE OF THE GOVERNMENT (FIXED PRICE) (SEP 1996), In place of Clauses 52.249-1 & 52.249-4

FAR 52.249-8 DEFAULT (FIXED-PRICE SUPPLY AND SERVICE) (APR 1984)

DEAR 970.5232-3 ACCOUNTS, RECORDS, AND INSPECTION (DEC 2000)

THE FOLLOWING CLAUSES APPLY IF THE SUBCONTRACT EXCEEDS \$500,000:

FAR 15.406-2 CERTIFICATE OF CURRENT COST OR PRICING DATA, unless the Subcontract and all Modifications are exempt from the submission of certified cost or pricing data, per FAR 15.403.

FAR 52.215-10 PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA (OCT 1997), if cost or pricing data is required.

FAR 52.215-12 SUBCONTRACTOR COST OR PRICING DATA (OCT 1997), if cost or pricing data is required.

FAR 52.219-9 SMALL, SMALL DISADVANTAGED AND WOMEN-OWNED SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2000), unless the Subcontractor is a small business or there are no subcontracting possibilities.

DEAR 952.226-74 DISPLACED EMPLOYEE HIRING
PREFERENCE (JUN 1997)

DEAR 970.5204-77 WORKFORCE RESTRUCTURING UNDER
SECTION 3161 OF THE NATIONAL DEFENSE
AUTHORIZATION ACT FOR FISCAL YEAR
1993 (JUN 1997)

END OF GENERAL PROVISIONS